

contract right to receive future delivery of livestock produced by a farmer, rancher or feedlot operator. "Control" according to legal dictionaries means to direct, manage or supervise. In this case, the direction, management and supervision is directed towards the production of livestock or the operations producing livestock, not the simple right to receive delivery of livestock raised by someone else.

The word control is intended to close any loophole which may allow clever attorneys to circumvent congressional intent. Such loopholes could include situations where a packer that owns livestock engages in a transaction where a farmer takes nominal title to livestock or livestock feeding operations, but a packer has substantial operational control over the livestock production which is similar to ownership. Another situation is where a packer could exercise such operational control through a related entity. However, where a farmer or rancher holds true operational control, this amendment would not affect him.

Mr. GRASSLEY. Mr. President, I understand that the Senator from South Dakota does not intend the word "control" to include forward contracts and marketing agreements. However, how are such contracts different from operational control?

Mr. JOHNSON. There are two reasons that forward contracts and marketing agreements are not within the definition of control. First, these contracts do not allow a packer to exercise any control over livestock production operation. Rather, the contracts merely provide the packer with the right to receive delivery of livestock in the future and most include a certain amount of quality specifications. There is no management, direction or supervision over the farm operation in these contracts. The farmer or rancher makes the decision to commit the delivery of livestock to a packer through the contract without ceding operational control. In fact, the farmer or rancher still could make a management decision to deliver the livestock to another packer other than the one covered in the contract, albeit subject to damages for breach of contract. Even where such contracts include detailed quality specifications, control of the operation remains with the farmer. The quality specifications simply related to the amount of premiums or discounts in the final payment by the packer for the livestock delivered under the contract.

Second, several states prohibit packer ownership of livestock, such as Iowa, Minnesota, and Nebraska. The Iowa law, for example, prevents packers from owning, operating or controlling a livestock feeding operation in that state. But packers and producers may still enter into forward contracts or marketing agreements without violating that law because operational control, in the context of ownership, is the issue. The term control is intended to be similarly interpreted and applies in this amendment.

Mr. GRASSLEY. I concur and understand the distinction between control of livestock production in the operational sense and a mere contract in which a packer has the right to receive delivery of livestock in the future. I also understand that farmer owned cooperatives, including federated agricultural cooperatives, are exempt if they own a packing plant. But there is yet another situation in which some packers enter into joint ventures with farmer-owned cooperatives that has members which would supply the jointly owned packing plant.

It has never been our intent to prevent cooperatives from engaging in relationships with packers, and the amendment does not do that. For example, in Iowa, Excel, which is owned by Cargill, is in negotiations with a beef cooperative to build a packing plant to be owned by a joint venture. If that deal is completed, the actual packer would be the joint venture entity formed by Cargill/Excel and the beef cooperative. Co-op members who chose to participate in that endeavor can freely commit all or a portion of their cattle for slaughter without violating this amendment. The reason is that the packer in the exercises no operational control over livestock production. Rather, the package again has a mere contractual right to receive delivery of cattle that meet its specifications on grade and quality. That contract may be a standards forward contract or marketing agreement, or the contract may take the form of a membership agreement between each farmer member and the beef cooperative. In either event, this amendment does not affect this joint venture arrangement.

Mr. JOHNSON. That is absolutely correct Senator GRASSLEY, and we have advocated this position all along. Thank you from clarifying that issue with me. While forward contracts and marketing agreements can pose problems for the marketplace, they are outside the purview of our amendment.

Mr. GRASSLEY. Thank Senator JOHNSON for clarifying the scope of the amendment.

#### MORNING BUSINESS

Mr. DASCHLE. I ask unanimous consent there now be a period for morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### FAILURE TO PASS A FARM BILL

Mr. HARKIN. What was the final vote, I inquire?

The PRESIDING OFFICER. The yeas are 54; the nays are 43.

Mr. HARKIN. We would have had 55. Senator AKAKA was missing, of course.

This is a sad day and not a very bright Christmas next week for farmers and ranchers and people who live in rural America. What we have said to them is: You don't count; you will

come on the tail end of everything else. We will do this, we will do that around here, but when it comes to our farmers and ranchers, you are at the tail end. That is what my Republican colleagues have said. Go take a hike, they said to rural America. We will deal with you later. We will deal with you later.

I come from a town of 150 people. I was born and raised there. I bet I am the only Senator in this Chamber who lives in the house in which he was born. I wasn't born in the hospital; I was born in the house. I still live in that house in a town of 150 people. I have a strong feeling about people who live in small towns and communities that need rural development, that need sewer and water, need better communications, telecommunication centers in our country, who need job opportunities. Our farmers surround these small communities and this is what they need for them and their families and their livelihood.

We tried everything humanly possible to get this bill passed, in good faith, working in a bipartisan manner. Facts are devilish little things because facts give lie to rhetoric. We hear all this rhetoric from the other side that this is a partisan bill. If it wasn't so partisan, we could get it through.

But the facts are devilish things. And the facts are that every single title of this bill we worked on, I worked closely with my ranking member, a good friend, an honorable person, someone who cares deeply about agriculture. We worked on these. We worked them out in committee. Every single title got a unanimous vote, all Republicans, all Democrats, but one title, commodities.

Senator HUTCHINSON from Arkansas voted with us, so it was bipartisan. Basically, the same thing happened in 1995. We had to deal with the commodity title in the Chamber. I understood that. But then we had all the amendments that gutted nutrition, gutted conservation, that went after rural development. And we had all decided in the committee, unanimously, on what we reported out.

The facts give lie to rhetoric. They have the rhetoric. They have been hit with the rhetoric, but the facts are on our side. This is one of the most bipartisan farm bills ever to come out of the Senate Agriculture Committee. The facts are there and cannot be denied. Again, they talked about reaching more of a bipartisan consensus. Again, the facts are devilish little things.

We had three big amendments offered on the Republican side that were sort of in the nature of substitutes for a committee bill. One was the amendment offered by my friend from Indiana, the ranking member, Senator LUGAR. Then we had the amendment offered by Senators COCHRAN and ROBERTS. And then this morning we had the amendment offered by Senator HUTCHINSON. If you listened this morning, you heard Senator HUTCHINSON and others saying this would be the only bill; if only we would pass the Hutchinson bill, it could be the only bill that